

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

MICHELLE F. KRAUS
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IVORY Q. HILL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 02A03-0601-CR-06

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0506-FA-31

October 5, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Ivory Q. Hill appeals from his conviction for Dealing in Cocaine,¹ a class A felony. Specifically, Hill argues that the trial court erred in denying his motion for a continuance and that the evidence is insufficient to support his conviction. Finding no error, we affirm the judgment of the trial court.

FACTS

Hill was on home detention in Fort Wayne. On May 31, 2005, Officers Schwertfager and Snyder went to Hill's residence to check on him pursuant to the conditions of his home detention. Officer Snyder went around to the back of the house while Officer Schwertfager went to the front door. A woman answered the door, and as Officer Schwertfager entered, he observed someone run toward the back door. Officer Snyder identified this individual as Hill, who had run out the back door carrying a pair of shoes. Hill went back inside the residence, refused to answer the officers' questions, and ran upstairs.

Officer Schwertfager followed Hill upstairs and observed him exiting a bedroom. Believing Hill's conduct to be suspicious, the officers took him into custody, handcuffed him, and searched the residence. The officers found the pair of shoes that Hill had been carrying. One shoe held a baggy containing a white powdery substance and the other shoe contained a scale with the residue of a white powdery substance. Laboratory analysis later confirmed that the substance was cocaine and that the baggy held 59.45 grams of the drug.

After being advised of his rights, Hill admitted, in the presence of narcotics officer Detective Gore, that the substance was cocaine and that he had been using and selling the

¹ Ind. Code § 35-48-4-1.

drug. Hill told Detective Gore the identity of his supplier and explained that he typically left the shoes on the back porch so that his supplier could have access to whatever was inside of them. Hill also stated that he used between three and six grams of cocaine every day. When he was informed that there would be a K-9 search of his residence, Hill admitted that a second scale was hidden in a couch cushion in his family room. The officers found the second scale, a two-pound container of banana-flavored Muscle Milk,² \$687 in cash on Hill's person, and a cell phone that Hill was carrying that was "ringing every two minutes" with "a different number each time" Tr. p. 116, 122.

On June 6, 2005, the State charged Hill with class A felony dealing in cocaine, and on August 17, 2005, during a hearing, the trial court scheduled a speedy trial for October 4, 2005. On the day Hill's trial was scheduled to begin, he requested a continuance because he had not received certain discovery materials from his attorney until 24 hours before the trial. Hill's attorney had had the discovery for six weeks and informed the trial court that he was prepared to go to trial. The trial court denied Hill's motion.

At Hill's jury trial, Detective Gore testified that cocaine users typically buy and possess one to three grams of cocaine at a time and that a chronic user might possess a little bit, but "not a whole lot," more than that. Tr. p. 149, 166. He also testified that the constant ringing of Hill's cell phone from a series of different numbers is consistent with a conclusion

² Muscle Milk is a protein supplement that is a common cutting agent used by dealers to increase the quantity of cocaine they have to sell. Tr. p. 157-58.

that Hill was dealing drugs. The jury found Hill guilty as charged and on November 9, 2005, the trial court sentenced Hill to thirty years of incarceration. Hill now appeals.

DISCUSSION AND DECISION

I. Continuance

Hill first argues that the trial court erred in denying his motion for a continuance on the day of trial. Rulings on nonstatutory motions for continuance are committed to the sound discretion of the trial court and will be reversed only for an abuse of that discretion and resulting prejudice to the defendant. Evans v. State, 809 N.E.2d 338, 342 (Ind. Ct. App. 2004), trans. denied. An abuse of discretion occurs where the court's decision is clearly against the logic and effect of the facts and circumstances before it. Packer v. State, 800 N.E.2d 574, 578 (Ind. Ct. App. 2003). Requests for continuances are not generally favored and will be granted only in the furtherance of justice on a showing of good cause. Clark v. State, 539 N.E.2d 9, 11 (Ind. 1989). The defendant must establish that the additional time he requested would have aided him. Id.

Here, Hill requested a continuance because his attorney had failed to share certain discovery materials with him until twenty-four hours prior to trial. There is no evidence, however, that the lack of an opportunity to review the materials and discuss them with his attorney prejudiced Hill. Indeed, Hill's attorney had had the evidence for six weeks and informed the trial court that he was prepared to go to trial. Furthermore, the attorney indicated that he understood and accounted for Hill's concerns with respect to the discovery material: "I believe the things in there that the Defendant is referring to are admissions he

made at the time of his arrest which I intend to challenge in the trial proceedings.” Tr. p. 6. The attorney then turned to Hill and asked, “Is that right?” Id. Hill responded to this query in the affirmative. Id. The trial court also observed that Hill had requested a speedy trial and had accepted the scheduled trial date. Under these circumstances, we cannot conclude that the trial court abused its discretion in denying Hill’s motion for a continuance.

II. Sufficiency of the Evidence

Hill next argues that the evidence is insufficient to support his conviction. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of witnesses. Cox v. State, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). Rather, we consider only the evidence most favorable to the verdict along with all reasonable inferences that may be drawn therefrom. Beeler v. State, 807 N.E.2d 789, 791 (Ind. Ct. App. 2004), trans. denied. We will affirm a conviction if there is substantial evidence of probative value to support the verdict. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

To convict Hill of dealing in cocaine, the State was required to establish that he was in possession of cocaine with the intent to deliver it. Ind. Code § 35-48-4-1(a)(2)(C). Here, there is no dispute that Hill was in possession of cocaine, inasmuch as he admitted that the 59.45 grams of cocaine found in his residence belonged to him. Tr. p. 182.

The State must also establish that Hill had the intent to deliver the cocaine. Because intent is a mental state, the trier of fact must often examine the circumstantial evidence and draw reasonable inferences therefrom to determine the existence of the requisite intent. Chandler v. State, 581 N.E.2d 1233, 1237 (Ind. 1991). Such evidence need not overcome

every reasonable hypothesis of innocence and need only generate a reasonable inference of guilt. McGuire v. State, 613 N.E.2d 861, 864 (Ind. Ct. App. 1993). There are three general categories of circumstantial evidence that have been found to establish an intent to deliver narcotics—possession of (1) a large quantity of narcotics, Davis v. State, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003), (2) narcotics and a large amount of currency, Chandler, 581 N.E.2d at 1237, or (3) dealer paraphernalia, McGuire, 613 N.E.2d at 864 (including cutting agents, scales, and plastic bags as dealer paraphernalia).

Here, Hill admitted to the officers that he was selling or dealing the cocaine to make money. Tr. p. 120, 155, 195, 198, 202. Moreover, Hill was in possession of nearly 60 grams of cocaine, and Detective Gore testified that a typical user possesses one to three grams at a time. Id. at 149. Additionally, Hill was found with a large amount of cash—\$687—on his person. Id. at 183. Finally, Hill’s residence contained drug-dealing paraphernalia, including a cutting agent, two scales, and a cell phone that was ringing constantly from a different number each time. Id. p. 115-16, 122, 127-30. Under these circumstances, it is apparent that there is sufficient evidence supporting a conclusion that Hill intended to deliver the cocaine and, consequently, that there is sufficient evidence supporting his conviction.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.